**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGEMENT NO.162 OF 2007**
**IN**
**SUIT NO.711 OF 2007**

Alka V. Kothari .. Plaintiff.
Versus
Structured Clothing Co. Pvt. Ltd. .. Defendant.

Mr.Anil Agarwal for plaintiff.
Mr.Jagtiani i/b.Negandhi Shah & Himaytullah for defendant.

**CORAM : S.C.DHARMADHIKARI, J.**
**DATE : 9TH JULY, 2007.**

**P.C.:**

1. Heard Mr.Agarwal appearing for the plaintiff and Mr.Jagtiani for the defendant.

2. The Summons for Judgement is taken out in a Summary Suit which is based upon a written contract evidenced by the Invoice at exhibit "A", delivery challan at exhibit "B" so also a dishonoured cheque, copy of which is exhibit "C". The particulars of the goods which have been sold, supplied and delivered according to the plaintiff is to the tune of Rs.1,80,947/- and a cheque for that sum was forwarded which came to be dishonoured. The invoice carries with it interest @ 24% per annum but the plaintiff restricts her claim to 18% per annum in so far as the interest is concerned.

3. Mr.Agarwal submits that the suit is rightly filed as a Summary Suit. The documents referred to above,

written contract so also receipts of goods and invoice is undisputed so also cheque being forwarded. He submits that if the delivery challan and invoices are bogus, then, there is no explanation as to why the defendants after having received the suit notice on 29th April, 1996, did not raise any dispute till the filing of the present suit and receipt of writ of summons from this Court. Therefore, such defences raised for the first time lack bonafides and can safely be termed as false and frivolous so also taken with a view to delay the legitimate claim of the plaintiff.

4. Mr.Jagtiani on the other hand submits that the suit is not maintainable as summary suit inasmuch as the invoice and the delivery challan on which it is based were never issued by the defendants. The delivery challans which are based upon some purchase orders are infact series of purchase orders placed by one Mahendra and the goods have been delivered at the factory premises all throughout at MIDC, Wapi, Gujarat. The Invoice Nos. 7 and 8 are the invoices for which the cheque has been issued and these invoices so also payments are duly reflected in the accounts. In such circumstances, the suit cannot be maintained. As far as the cheque is concerned, it is contended that the cheque was dishonoured in view of short deliveries and defective fabric. The

advantage of dishonour ought not be given to the plaintiffs inasmuch as the suit invoice and delivery challan is bogus. There is never delivery but the goods have always been lifted by Mahendra. In such circumstances and when there is enough doubt created about genuineness of the documents annexed to the plaint, it is a fit case where unconditional leave can be granted.

5. With the able assistance of Mr.Agarwal and Mr.Jagtiani, I have perused the plaint and the annexures thereto, the reply and the rejoinder affidavit. The suit is filed under Order 37 of the Code of Civil Procedure by the plaintiffs trading in the name of M/s.Vinod Kumar & Co. and the defendant which is a limited company incorporated under the Companies Act, 1956.

6. From a perusal of the plaint and the annexures thereto, it is apparent that the claim in the suit is for price of goods sold and delivered. The written contract which is sought to be relied upon is culled out from the invoice/bill and delivery challan. The suit is also based upon a dishonoured cheque.

7. The defendants in their affidavit in reply specifically urge that the invoice was never issued to them that the plaintiffs have supplied and delivered goods

to the defendants is admitted, but details of all the purchase orders and invoices are also set out in the affidavit in reply. In the affidavit in reply a clear assertion is made that the goods in the subject suit were never supplied at the address which is sought to be relied upon, namely, at Bandra, Mumbai. The factory premises of the defendants are situate at MIDC, Wapi, Gujarat. Copies of the invoices which are evidencing this fact are also annexed to the affidavit in reply.

8. There is an explanation with regard to the cheque inasmuch as it is said that the payment under the cheque relates to Invoice Nos.7 and 8. This statement is sought to be corroborated by relying upon the accounts. It is contended that the amount of the invoices in the suit and the cheque does not tally As far as the rubber stamp is concerned, it is contended that the same is also bogus as the goods were never received at Bandra, Mumbai. The said address is the old office address.

9. In the affidavit in rejoinder, the above facts are sought to be denied. While it is true that the affidavit in reply sets out the case of the defendant for the first time and there is no reply to the notice of 29th April, 2006, yet, it is not possible to ignore the pleas raised on affidavit and the documents which are annexed to the

affidavit in reply. There are several triable issues pertaining to the claim of the plaintiff in the suit. Apart from genuineness of the documents relied upon, the liability is denied on the ground that the statement of account relied upon does not reflect anything as due and payable. This is a matter where evidence will have to be led by the plaintiff to prove his claim, more so, considering the pleas raised in the affidavit in rejoinder.

10. In such circumstances, an opportunity to parties to prove the basic issues cannot be denied. In these circumstances, the defendants are granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes. Written statement, if any, to be filed within eight weeks from today. Discovery and inspection within eight weeks thereafter.

**(S.C.Dharmadhikari, J.)**